Document:-
A/CN.4/SR.498

Summary record of the 498th meeting

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1959 , **vol. I**

functions. The Ministry of Foreign Affairs had to notify the authorities of the area in which they were interested so far as the performance of consular functions was concerned and such notification had to be confirmed to the local authorities.

51. In the United Kingdom officials of consular departments were recommended to obtain letters patent and an exequatur. Local authorities accepted the intervention of such officials even without letters patent and an exequatur, but the reply came through the Foreign Office, even if the original intervention had been with the Home Office or the local authorities. The United Kingdom courts did not accept the intervention of diplomatic agents unless they had the exequatur.

52. Officials of diplomatic missions had to be able to perform consular functions in cases where no normal consular office existed. Thus, even *de lege ferenda,* once diplomatic relations had been established, there would be no great difficulty in developing consular relations. He could not, however, wholly agree with Mr. Scelle that States had a duty to establish consular relations. The idea was reasonable, but did not yet exist in international law.

53. With regard to the question of competence, he said that trade was not the exclusive concern of consuls, although the conclusion of specific private law contracts was normally part of the consular function. On the other hand, trade policy, the conclusion of trade treaties and even protests against violations of trade treaties remained matters dealt with at the diplomatic level; consuls might, in the case of private individuals, make representations to protect their interests. A further distinction between the diplomatic agent and the consular officer was that, whereas the latter could not properly be denied the right to proceed to a particular place in his district for the purpose of protecting the interests of a national of the sending State, the former might have to obtain the express permission of the receiving State for a like purpose.

54. If in the draft on consular intercourse and immunities, the Commission wished to promote the progressive development of international law, he could accept the Special Rapporteur's text of article 1, perhaps by amending it, with certain reservations, as proposed by Mr. Yokota and Mr. Edmonds, since it was the current practice to accord States equal treatment in the opening of consular offices. If, however, the Commission was engaged in codification, that text would not be wholly suitable.

55. Mr. TUNKIN observed that the Commission was trying to form rules of international law, whether *de lege lata* or *de lege ferenda.* Undoubtedly it must take into account existing practice, if that was beneficial to international relations and world peace; nobody could, of course, contest that even if the general practice did not yet exist, the rule might well be drafted *de lege ferenda.* The universal practice was, however, that every diplomatic mission might perform some consular functions. That was not an exception, as Mr. Ago had suggested. No one had ever contested that right regardless of whether consulates existed on the territory concerned. The main question was whether the practice was beneficial to international relations, and that it was so could not be denied. The fewest obstacles should therefore be placed in its way. The words "includes the establishment of consular relations" in the Special Rapporteur's revised text of paragraph 2 gave rise to some doubts and might be deleted and the paragraph redrafted. The main objective was to see to it that the possibility for diplomatic missions to exercise consular functions was not excluded. The Drafting Committee could no doubt find some method of stating that in every case diplomatic missions might perform consular functions.

The meeting rose at 12.55 p.m.

498th MEETING

Thursday, 21 May 1959, at 9.45 a.m.

Chairman: Sir Gerald FITZMAURICE

Consular intercourse and immunities (A/CN.4/108, A/CN.4/L.79, A/CN.4/L.80, A/CN.4/L.82) (*continued*)

[Agenda item 2]

DRAFT PROVISIONAL ARTICLES ON CONSULAR INTERCOURSE AND IMMUNITIES (A/CN.4/108, PART II) (*continued*)

ARTICLE 1 (*continued*)

1. The CHAIRMAN asked the Commission to continue the debate on the Special Rapporteur's new article 1 (see 497th meting, para. 6).

2. Mr. HSU observed that the new text proposed by the Special Rapporteur seemed to be self-contradictory. If the establishment of diplomatic relations included the establishment of consular relations, the opening of consulates would not be effected by agreement, while, if consulates were opened by agreement, the establishment of diplomatic relations did not include the establishment of consular relations. It had been stated that paragraph 2 implied a liberalization in the establishment of consular relations. That idea should be welcomed, but it should be presented logically, and the phrase referring to the opening of consulates in paragraph 1 should be amended. Whereas it was relatively immaterial whether consular functions were exercised by a consulate or by the consular section of an embassy, the opening of a consulate involved other material considerations. Preferably, therefore, the phrase "and the opening of consulates" should be placed in a different context and elaborated, but without the qualification that the opening of consulates was subject to agreement.

3. The CHAIRMAN, speaking as a member of the Commission, observed that the Special Rapporteur's text dealing with the connexion between the establishment of diplomatic relations and the exercise of consular functions was preferable to the texts suggested by Mr. Yokota and Mr. Edmonds (see 497th meeting, paras. 11 and 9) because it embodied the ideas both of establishing consular relations and of opening consulates. He doubted, however, whether "consular relations" was the correct term. One could, of course, speak of diplomatic relations, but instead of "consular relations" he would prefer some such phrase as "the reception of consular officers" or "the carrying out of consular functions", though he would not necessarily press that suggestion.

4. There was some doubt about the meaning of the term "consular functions". Many functions were carried out by consuls which were not specifically consular

functions and might be carried out by a diplomatic mission, in cases where no consulate existed, as part of its ordinary diplomatic duties. To argue that those were necessarily consular functions or that the establishment of diplomatic relations implied the exercise of consular functions would be incorrect. The true position was masked by the fact that many functions might be carried out either by diplomatic missions or by consulates; but those were not specifically consular functions. The functions enumerated in article 13, paragraphs 8 and 10, and especially the maritime functions in paragraph 3, were specifically consular and were never carried out by diplomatic missions, unless they had attached to them a consular section, explicitly or tacitly authorized by the Government of the receiving State. In such cases, the consular section was in effect a consulate, even though it was housed in the premises of the diplomatic mission. It was most unusual for a consular section to be set up without the agreement of the receiving Government, and the specifically consular functions could not be performed without an exequatur.

5. The existing international law on the subject was not quite clear. True, consular functions were being increasingly exercised by diplomatic missions or by consular sections of such missions, but that was no reason for postulating as an actual rule of international law that the establishment of diplomatic relations *ipso facto* involved the establishment of consular relations. The practice was comparatively new, dating in the main from shortly after the First World War, and was bound up with the modern trend towards amalgamating the diplomatic and consular services. Furthermore, since it was generally agreed that the severance of diplomatic relations did not automatically entail the severance of consular relations, it must be equally true that the establishment of diplomatic relations did not necessarily entail the establishment of consular relations.

6. The Commission might therefore simply record its view that the practice whereby certain consular functions were performed by diplomatic missions was unobjectionable, provided that the receiving Government gave its consent; the substance of paragraph 2 might be discussed in the commentary; and the Governments might then be asked whether they would approve the insertion in article 1 of a provision along the lines suggested by the Special Rapporteur. Alternatively, the Commission might agree to take no final decision at that stage and to revert to the subject after it had considered the articles on consular functions; or it might ask the Drafting Committee to submit an alternative text, recognizing the practice, but not inferring an automatic rule of law implying that a receiving Government could not prevent an embassy from performing consular functions.

7. Mr. ZOUREK, Special Rapporteur, replying to the question asked by Mr. Matine-Daftary at the previous meeting (497th meeting, para. 40), said that the Czechoslovak Government had frequently appointed consuls-general where diplomatic missions also existed; for example, Czechoslovakia at present maintained consulates in Bombay, Montreal, Shanghai, Salzburg, Damascus, Zürich, Istanbul, Zagreb and Szczecin. It had also sent consuls to countries in which there was no Czechoslovak diplomatic mission, and it had admitted consuls from States which had diplomatic missions in Czechoslovakia.

8. The exchange of views on article 1 had been very useful. The main point at issue was whether a diplomatic mission must have special permission to exercise consular functions and whether it might exercise all or only some of those functions. The arguments adduced against paragraph 2 had not convinced him. He had found no examples of diplomatic missions being debarred from exercising consular functions. It had always been agreed that diplomatic missions could protect the interests of the nationals of the sending State, but such missions had always also exercised, and should exercise, even the most typical consular functions, such as some of those enumerated in article 13. Every diplomatic mission exercised such functions, not by virtue of express permission, but in the course of its ordinary duties. It did not usually exercise the maritime functions set out in article 13, paragraph 3, only because, as a general rule, its seat was not at a seaport; but it was a practical, not a legal, obstacle which precluded it from doing so.

9. It was true that sometimes States required the head of the consular section in an embassy to hold letters patent and to request an exequatur, but those documents were not a prerequisite for engaging in consular activities; they were required merely when the consular section wished to have direct access to local authorities. Otherwise all intercourse of that kind was conducted through the Ministry of Foreign Affairs, as in the case of diplomatic intercourse.

10. The Commission should see the position clearly, because he would have to revert to it when dealing with subsequent articles. If it did not accept the proposition that diplomatic relations included consular relations, it would find it difficult, in theory at least, to maintain that consular relations might continue after the severance of diplomatic relations, except when a state of war had been declared between the sending State and the State of residence. Such, however, was the view of the vast majority of authors, and on it he had based article 19, paragraph 3.

11. The term "consular relations" had been criticized; but as it was consecrated by usage and had been chosen by the General Assembly, the Commission was virtually bound to use it, the more so because, at times, consular relations existed in the absence of diplomatic relations. Moreover, that term was completely justified in theory also. If a State sent a consul to another State, that led to relations between the two States which were governed by international law, and to certain rights and obligations on the part of the two States in question.

12. With regard to the Chairman's suggestions concerning procedure, he had come to the conclusion that the wisest course would be to adopt paragraph 1 and leave paragraph 2 in abeyance until the Commission had studied the whole draft, and in particular articles 13 and 19. It would be quite possible to redraft paragraph 2 in language using some other phrase instead of the term "consular relations".

13. The CHAIRMAN suggested that the Commission might, before adopting the Special Rapporteur's suggestion, reflect that article 1 appeared almost flatly to contradict the insistence on agreement in article 2 and the statement in paragraph 10 of the commentary on article 1 (A/CN.4/108, part II) that no State was bound to establish consular relations unless it had covenanted to do so under an earlier international agreement. The reference intended in article 1, paragraph 2, was really, in his view, to consular posts rather than to consular relations. The substance of article 1, para-

graph 2, might therefore be transferred to article 2, since the position would be much clearer if all those points were dealt with in a single article.

Article 1, paragraph 1, as redrafted, was adopted, subject to further drafting.

Further consideration of article 1, paragraph 2, was deferred.

ARTICLE 2

14. The CHAIRMAN invited the Committee to consider article 2 (*Agreement concerning the consular district*), to which Mr. Edmonds had submitted the following amendments:

"(i) In paragraph 1 replace 'shall' by 'should';

"(ii) Replace paragraph 2 by the following:

" 'In the absence of specific agreement or notification by the State of residence to the contrary, a State may have a consul at any port, city or place within the territory of the State of residence where any other State is permitted to have such an officer.'

"(iii) Amend paragraph 4 to read:

" 'Except as may otherwise be specified by agreement, a consul may exercise his functions outside his district only with the express permission of the State of residence.' "

15. Mr. ZOUREK, Special Rapporteur, introducing article 2, said that the principle of agreement laid down in article 1, paragraph 2, as redrafted, certainly governed article 2, although there were cases in which consular relations were for the time being unilateral, as when a State admitted a consul without requesting permission to send one in return.

16. The seat and the district of the consular mission were not the only points specified in consular conventions, but they were the essentials that must be fixed in order to avoid any controversies between the States concerned.

17. To lay down a rule regarding subsequent changes in the consular district would be logical. Various formulas appeared in the consular conventions, including the possibility of agreement to a change in district by a notification against which no objection was raised. Those were matters of detail; the principle should be maintained.

18. The rule laid down in paragraph 3 was also essential, but the wording might now be revised in line with the revision of article 1, paragraph 1, already adopted. Some such paragraph was, however, required in order to avoid any misunderstandings between the sending State and the State of residence.

19. Paragraph 4 dealt with the essence of the consular relation. If consular representatives wished to exercise their functions outside their district, they must obtain the express permission of the State of residence.

20. The change suggested for paragraph 1 in Mr. Edmonds's amendments seemed to be no improvement, since the seat and district were the minimum requirements to be agreed on.

21. The text suggested by Mr. Edmonds for paragraph 2 differed entirely from the idea on which his own paragraph 2 had been based and, if it were accepted, should be incorporated elsewhere. He would, however, welcome further explanation and the views of the Commission before taking a definite stand on that amendment.

22. He would have no basic objection to the amendment to paragraph 4, if the Commission accepted it. He recommended, however, a formula which would embody both the introductory phrase of the present text and Mr. Edmonds's amendment.

23. Mr. EDMONDS explained that his amendment to paragraph 1 was merely a drafting change; he had thought the mandatory "shall" too strong.

24. The Special Rapporteur's paragraph 2 was unnecessary and redundant. It might be as well to introduce at that point the most-favoured-nation clause, which he had taken directly from the Harvard draft.[1] The provision was not unduly rigid, since it was qualified by the phrase "In the absence of specific agreement or notification by the State of residence to the contrary".

25. He could accept paragraph 3 as submitted by the Special Rapporteur, but paragraph 4 imposed a restriction which the Commission should reject. The consul's exercise of his functions outside his district should be governed by an agreement between the States concerned, not by the provisions of the articles.

26. Mr. SCELLE said that article 2 was open to criticism. The duty of a State to establish consular offices was not mentioned either in article 1 or in article 2, but that duty existed wherever circumstances, such as a concentration of foreign nationals in a particular State, required it. The consulate must have a seat, but when a diplomatic mission was performing consular functions, the mission's premises could not be called the seat of a consulate. The wording of article 2, paragraph 1, was thus inconsistent with the ideas advanced by the Special Rapporteur in support of his redraft of article 1, paragraph 2.

27. There was much to be said concerning paragraph 2, and he would give his full reasons in connexion with subsequent articles. The paragraph should, however, be completed by the insertion of the words "either directly or indirectly" after the word "made", since comments on subsequent articles would show that a prior agreement concerning the exchange and admission of consular representatives might in fact be modified by a systematic refusal to grant the exequatur or by an equally systematic withdrawal of it. In recent relations between Tunisia and France, the exequaturs of five or six consuls had been systematically withdrawn, not because of any professional misconduct by any consuls, but for political reasons, and the previous consular agreement had thus been completely modified.

28. He could not understand the intention in paragraph 3. Either the statement was so self-evident that it was not worth making or it was incompatible with the previously adopted principle of agreement. The paragraph should be deleted, because it said either too little or too much.

29. He would revert to the substance of paragraph 4 in connexion with later articles, but he would not in principle object to its retention.

30. Mr. VERDROSS agreed in principle with the substance of article 2 of the Special Rapporteur's draft, but considered that it should be made clear whether the idea contained in paragraph 3 was the same as that in the new article 1, paragraph 1. The matter might be regarded as a drafting point, but he thought that

[1] Harvard Law School, *Research in International Law, II. The Legal Position and Functions of Consuls* (Cambridge, Mass., 1932), pp. 389-392.

it should be suggested to the Drafting Committee that the words "opening of consulates" in article 1, paragraph 1, should be omitted, so that the establishment of relations would be dealt with in article 1 and the opening of consulates in article 2.

31. Mr. YOKOTA observed that paragraph 2 related only to changes in the consular district and not to changes in the seat of the consular mission. Since such changes might occur and should also be made by agreement between the two States concerned, it would be advisable to insert the words "or seat" after "consular district".

32. Turning to paragraph 4, he suggested that the word "express" should be deleted. There seemed to be no good reason for prohibiting consular officers from exercising their functions outside their district, unless the State of residence objected. If, however, express permission was always required, they might be prevented from exercising necessary functions, especially in urgent cases. Moreover, the practice in that respect was not simple and the districts of consular officers were not always known to the State of residence. For example, some States, including the United States, which were very careful in specifying consular districts, made known the districts of their consulates to the Government of Japan, but certain South American and Asian countries did not specify the districts of their officers, but only the seats of consular missions. In those circumstances, it was technically difficult and sometimes even impossible for the State to give express permission, and it was inadvisable to lay down such a rigid and obligatory rule.

33. He thought Mr. Edmonds's version of paragraph 2 dealt with a problem different from that referred to in the Special Rapporteur's paragraph 2. Both provisions were useful and both should be retained.

34. Mr. AMADO said, in connexion with article 2, paragraph 2, that he could not see what changes could be made in consular districts. The provision should be made more precise.

35. He did not approve of the use of the term "consular representatives" in paragraph 1. If the majority decided to retain the phrase, he would not object, but he preferred the term "consular officers".

36. Mr. SCELLE said, in reply to Mr. Amado, that one far-reaching change in a consular district would be its abolition for such reasons as suspicion of espionage or difficulties with the local population. Of course, such action would constitute a partial annulment of the agreement.

37. He could not agree with Mr. Edmonds's version of paragraph 2, which seemed to imply a somewhat artificial equality of consular representation. The opening of a consulate was obviously governed by the needs of the sending State, rather than by the possible action of a third State.

38. Mr. SANDSTRÖM proposed certain amendments to article 2. He was against the use of the terms "consular representatives" and "consular mission", which unduly assimilated consular relations to diplomatic relations. He therefore proposed that in paragraph 1 the words "exchange and admission of consular representatives" should be replaced by "establishment of consulates". In any case, the question of terminology would have to be discussed in connexion with article 4 (*Acquisition of consular status*).

39. He agreed with Mr. Scelle that paragraph 3 was superfluous and proposed its deletion. Finally, he considered that the statement in paragraph 4 of the commentary on article 2 (A/CN.4/108, part II) should be included in the article itself. He therefore proposed the addition of a new paragraph, based on article 5 of the draft on diplomatic intercourse and immunities:[2]

> "The consent of the State of residence is also required if it is intended to appoint a consul in this State to be at the same time a consul in another State."

40. Mr. TUNKIN said he was in general agreement with the Special Rapporteur's text of article 2 and thought that paragraph 1 was acceptable, subject to drafting changes.

41. Referring to paragraph 2, he said the paragraph in fact meant that no change of a consular district might be made without the consent of the sending State; but it seemed to be going too far to provide that the receiving State could make no changes in the consular districts in its own territory. He had no specific proposal to make, but hoped that the Commission would take his comment into account.

42. He agreed with Mr. Scelle and Mr. Sandström that paragraph 3 was superfluous and could be omitted.

43. Turning to Mr. Edmonds's amendments, he thought that the proposed paragraph 2 was likely to lead to practical inconveniences if it were accepted. Any receiving State which did not wish to be bound by any such obligation as Mr. Edmonds's text implied would have to give special notice, on the opening of the first consulate of a sending State in a particular town or port, announcing that the same rights were not accorded to other States. That might give rise to disputes about the validity of such a notification and to other unnecessary complications. On the other hand, he considered that Mr. Edmonds's version of paragraph 4 was preferable to the Special Rapporteur's draft.

44. Mr. PAL considered that the difficulties with regard to article 2 related to wording rather than to substance. He agreed with the speakers who had pointed out the redundancy of paragraph 3, particularly in view of the new provisions of article 1, paragraph 1, read together with article 2, paragraph 1. He thought it was clear that the words "consular district" in article 2, paragraphs 1 and 2, meant the territory where the functions of a consulate were to be performed. There might be changes either in the location of the consulate or its offices or in the territorial extent of the consular function. In that connexion, he drew attention to article 11 of the draft on diplomatic intercourse and immunities.[3]

45. He did not think that the opening phrase of paragraph 4 was correct, since there was no other article in the draft relating to the subject matter of article 2. He therefore preferred Mr. Edmonds's version of the paragraph in that respect.

46. He drew attention to the statement in the last sentence of paragraph 6 of the commentary on article 2. Nothing in article 2 itself supported that statement. On the other hand it had been considered necessary to include article 19 in the draft on diplomatic intercourse and immunities, because that provision did not

[2] See *Official Records of the General Assembly, Thirteenth Session, Supplement No. 9*, chap. III, para. 53.

[3] *Ibid.*

derive *ipso jure* from the establishment of diplomatic relations.

47. Mr. BARTOŠ said that he approved in principle of the Special Rapporteur's draft of article 2. Mr. Zourek himself had agreed that the word "representatives" should be replaced by some other term; that was a question for the Drafting Committee.

48. Paragraph 2 raised the theoretical question whether authorization to open a consulate was a contractual or a sovereign act. He believed that, once authorization had been given, a kind of convention, though not a formal one, was arrived at. Accordingly, the basis of paragraph 2 was correct. Nevertheless, cases of unilateral changes of situations in the State of residence should be taken into account; those changes were usually connected with political or economic considerations. For example, if a unitary State became a federal State, it might be considered advisable to change the consular districts. In such cases, it was quite justifiable for the State of residence to ask the sending State to make the change. Similarly, a change in the international status of a territory would almost certainly necessitate a change in the extent of consular districts. It could hardly be advisable or courteous for sending States to disregard requests for a change in such cases, and yet in certain cases the Yugoslav Government had met with a stubborn refusal on the part of certain sending States to heed such a request. An example of the economic considerations which might lead to changes of consular districts was that of the transfer of international trade from a Yugoslav port to a new post. Some sending States had retained their consulates in the old port; the question was whether the existence of the consular office in the old port was justified in view of the abolition of the old port for purposes of international trade. A State could not force a sending State to transfer its consulate to a town which might be more convenient for the State of residence; the main point, however, was whether or not the latter State was entitled to ask for such a transfer.

49. Although he had no objection in principle to Mr. Scelle's proposal, he pointed out that in practice the insertion of the words "either directly or indirectly" in paragraph 2 might enable States acting in bad faith to hamper consular officers in the performance of their functions.

50. With regard to paragraph 4, he agreed with Mr. Yokota that the word "express" should be deleted. In theory, express permission should be given to enable consular officers to exercise their functions outside their district; however, "express" permission must come from a competent organ and implied a formal authorization, while in practice such permission often had to be given urgently, and hence informally.

51. With regard to Mr. Edmonds's amendment to paragraph 2, he observed that the special most-favoured-nation clause concerning the right to open consulates in certain cities or ports had found a place in the consular conventions concluded between certain States. His country was a party to some of those conventions but always subject to certain conditions. In the first place, most-favoured-nation treatment was accorded only on the basis of reciprocity. Secondly, an exception was made for the case of so-called "frontier consulates". Yugoslavia consented to the establishment of a frontier consulate by a State which obviously required such a consulate and did not consider that any inequality was involved if it denied a similar right to other non-frontier States. For example, in view of the heavy frontier traffic between Italy and Yugoslavia, it had authorized the opening of an Italian consulate at Kopar (Capo d'Istria). On the other hand, there was no justification for other States to have consulates at that small provincial frontier town. The same principle had applied in the past in the case of a Yugoslav consulate-general authorized by Italy at Zara, where no other States had maintained consulates.

52. Subject to those reservations he had no objection to Mr. Edmonds's principle of putting all States on a footing of equality, and would vote for it if a vote was taken. In general, he was in favour of the text of article 2 prepared by the Special Rapporteur, as amended by Mr. Edmonds.

53. Mr. LIANG, Secretary to the Commission, announced that the Secretariat would reproduce and distribute the Harvard draft convention for the information of the Commission.

54. He had examined the most-favoured-nation provision of the Harvard draft, to which Mr. Edmonds had referred, and had found the following statement in the commentary of the Reporter: "The duty of a State to permit the establishment of consuls in parts of its territory open to the most favoured nation is a very common treaty provision".[4] However, not much material citing treaty provisions was indicated to bear out that assertion. On the other hand, the Reporter cited such authors as Vattel, Oppenheim, Fiore and Bluntschli to the effect that most-favoured-nation treatment was not required and went on to say that "occasionally treaties have not provided for most-favoured-nation treatment".[5]

55. In his opinion the position was rather that occasionally treaties had provided for most-favoured-nation treatment but that in the majority of bilateral treaties the provision did not appear. Of course, there had been peculiar circumstances in which the principle had been inserted in treaties. For example, some of the so-called "unequal treaties" had imposed on China the obligation to extend to one of the Western Powers the same treatment in respect of the establishment of consulates as it extended to other Powers. However, such treaties were a matter of the past and under present conditions the most-favoured-nation clause could be incorporated into treaties only on the basis of reciprocity, as Mr. Bartoš had indicated.

56. Therefore, he was of the opinion that the most-favoured-nation treatment in establishing consulates was not a matter of general practice, and that it was doubtful whether it could be recommended as a principle to be inserted in the draft.

57. Mr. AGO said, with regard to paragraph 1, that he agreed with Mr. Sandström that a precise term like "consulate" or "consular office" should be used. He agreed with Mr. Amado that the expression "consular representatives" should be avoided and he noted that the Special Rapporteur had expressed willingness to consider a modification of the terminology (see 497th meeting, para. 29). Similarly, the term "consular mis-

[4] Harvard Law School, *Research in International Law, II. The Legal Position and Functions of Consuls* (Cambridge, Mass., 1932), p. 229.

[5] *Ibid.*, p. 230.

sion" should be avoided. Moreover, paragraph 1 should be brought into conformity with the Special Rapporteur's new text of article 1, paragraph 1, and he suggested the following wording:

"The agreement concerning the establishment of consular relations shall specify the places at which consulates will be opened and their respective districts."

58. As to the case in which an agreement did not provide for the opening of consulates but simply for the creation of a consular department at the diplomatic mission, he suggested that it could be provided for by a second sentence along the following lines:

"If the agreement does not provide for the establishment of consulates but simply for the opening of a consular department at the seat of the diplomatic mission of the sending State, the agreement shall indicate the district of the said department."

59. If his suggestion was adopted, paragraph 3 would become superfluous and could be omitted.

60. He had been impressed by the arguments put forward by Mr. Scelle and Mr. Tunkin in connexion with paragraph 2, and suggested that a more flexible formula might be worked out which would enable the State of residence, if necessary, to take some action in the case of activities prejudicial to its interests or to good relations between it and the sending State.

61. As to paragraph 4, he considered Mr. Edmonds's amendment clearer than the Special Rapporteur's draft, although there was no substantive difference between them.

62. Mr. EDMONDS drew attention, in connexion with the Harvard draft on which his amendment to paragraph 2 was based, to a passage in Oppenheim's *International Law*:

"Commercial and consular treaties stipulate, as a rule, that the contracting States shall have the right to appoint consuls in all those parts of each other's country in which consuls of third States are already or may in future be admitted. Consequently a State cannot refuse admittance to a consul of one State for a certain district if it admits a consul of another State."[6]

63. Thus, while most-favoured-nation treatment could not be claimed as of right, and the Harvard draft did not contend that it could, it might be useful to stress that, in the absence of any specific agreement or notification to the contrary, one State could have a consul at any place where another State had been accorded that privilege.

64. Mr. MATINE-DAFTARY thought that article 2 should be limited strictly to the consular district. In his view the principle of agreement to establish consular relations was covered by article 1. It would be enough to entitle the article "Consular district" and paragraph 1 might simply provide that the seat of the consulate and the consular districts were governed by the agreement establishing consular relations or the agreement making subsequent amendments thereto. Paragraph 3 was superfluous and could be omitted. As to paragraph 2, the Special Rapporteur's version was acceptable as it stood. In his opinion, consular activities did not lend themselves to most-favoured-nation treatment and he failed to see why a country should be allowed to open a consulate in an area in which it had no nationals or substantial commercial interests. He was therefore opposed to Mr. Edmonds's amendment to paragraph 2, particularly in the codification of international law or in a multilateral convention.

65. Mr. PADILLA NERVO pointed out that if paragraph 1 referred to the agreement mentioned in article 1, paragraph 1, and was amended along the lines suggested by Mr. Ago, paragraph 3 might have to be retained in order to cover the case of the establishment of new consular offices not specified in the original agreement. Very often the consular districts provided for in an old consular treaty had to be adjusted to changing conditions and it was a common practice to open new consulates where necessary.

66. It might be considered that the case of new consular offices was covered by article 1, paragraph 1. If that was so, it should be made clear in the commentary. However, such a solution would raise another question: In what form would the agreement to the opening of new consular offices be signified? The consular commission of the sending State in conjunction with the exequatur of the State of residence might be deemed to constitute agreement; in other words, consent to the opening of a new consulate and to the determination of the seat and district of the consulate, and *agrément* in respect of the person of the consul might be considered as having been given at one and the same time. In his view, such an approach would be inconvenient because there might be cases in which the State of residence was agreeable to a new consulate and to the seat and district proposed but not to the person of the consul, and would therefore withhold its exequatur. Preferably, therefore, the question of new consulates should be dealt with in article 2, paragraph 3.

67. He agreed with the Secretary's remarks concerning Mr. Edmonds's amendment to paragraph 2. Moreover, the cases in which there was no specific agreement or notification by the State of residence concerning proposed consulates were comparatively rare. While it might be true that the most-favoured-nation clause appeared in some treaties, the more usual formula in bilateral treaties was to the effect that each of the two contracting parties would be permitted to establish consular offices in the ports, towns or other places within the territory of the other party. Where it appeared in a plurilateral treaty, it usually concerned only the States parties to the treaty, as in the case of the Agreement of 18 July 1911 between Bolivia, Colombia, Ecuador, Peru and Venezuela.[7]

68. In his view, it would be less objectionable not to include a most-favoured-nation clause and to leave it to States to decide the matter for themselves. He supported Mr. Edmonds's amendment to paragraph 4 because it was clearer than the Special Rapporteur's version.

The meeting rose at 12.55 p.m.

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[6] L. Oppenheim, *International Law: A Treatise*, 8th ed., H. Lauterpacht (ed.) (London, Longmans, Green and Co., 1955, vol. I, para. 425.

[7] See *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*, United Nations Legislative Series, vol. VII (United Nations publication, Sales No.: 58. V.3). p. 417.